

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

FELECIA D. DAVIS, §
§
Plaintiff, §
§
vs. §
§
EDUARDO VARGAS-REYES; AMICA §
MUTUAL INSURANCE COMPANY and §
CAROLINA J. GLENN, §
§
Defendants. §

Case No. _____

DEFENDANT'S INDEX OF DOCUMENTS

The following Exhibits are relied upon and incorporated by reference in Defendant's
Notice of Removal:

- A. Civil Docket Sheet/Register of Actions;
- B. Plaintiff's Original Petition, filed March 19, 2015;
- C. Civil Case Information Sheet, filed March 19, 2015;
- D. Jury Demand, filed March 19, 2015;
- E. Citation on Eduardo Vargas Reyes issued April 4, 2015;
- F. Notice of Initial Dismissal Hearing, signed April 7, 2015;
- G. Return of Service for Eduardo Vargas Reyes, filed April 22, 2015;
- H. Notice of Status Conference, dated July 8, 2015;
- I. Plaintiff's First Amended Petition, filed August 12, 2015;
- J. Notice of Status Conference, dated August 17, 2015;
- K. Plaintiff's Second Amended Petition, filed August 24, 2015;
- L. Citation on Amica Mutual Insurance Company issued September 9, 2015;

- M. Citation on Carolina J. Glenn issued September 9, 2015;
- N. Return of Service for Carolina J. Glenn, filed September 25, 2015;
- O. Return of Service for Amica Mutual Insurance Company, filed October 2, 2015; and
- P. Defendants' Original Answer, filed October 9, 2015.

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Location : All District Civil Courts [Images](#) [Help](#)

REGISTER OF ACTIONS

[CASE NO. DC-15-03183](#)

FELICIA DAVIS vs. EDUARDO REYES, et al

§
§
§
§

Case Type: **MOTOR VEHICLE ACCIDENT**
Date Filed: **03/19/2015**
Location: **193rd District Court**

PARTY INFORMATION

DEFENDANT AMICA MUTUAL INSURANCE COMPANY

Lead Attorneys
PAUL WILLIAM BENNETT
Retained
214-987-9600(W)

DEFENDANT GLENN, CAROLINA J

PAUL WILLIAM BENNETT
Retained
214-987-9600(W)

DEFENDANT REYES, EDUARDO VARGAS

PLAINTIFF DAVIS, FELICIA D.

AMY K WITHERITE
Retained
214-378-6665(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS			
03/19/2015	NEW CASE FILED (OCA) - CIVIL		
03/19/2015	ORIGINAL PETITION <i>Plt's Original Petition</i>		
03/19/2015	CASE FILING COVER SHEET <i>Plt Civil Coversheet</i>		
03/19/2015	ISSUE CITATION <i>EMAIL TO :MLEE@EWLAWYERS.COM</i>		
03/19/2015	JURY DEMAND		
04/04/2015	CITATION <i>ESERVE 4762422</i> REYES, EDUARDO VARGAS	Served Returned	04/15/2015 04/22/2015
04/06/2015	CITATION ISSUED		
04/22/2015	RETURN OF SERVICE <i>CITATION RETURN</i>		
07/09/2015	CANCELED DISMISSAL FOR WANT OF PROSECUTION (1:30 PM) (Judicial Officer GINSBERG, CARL) <i>BY COURT ADMINISTRATOR</i>		
08/12/2015	ISSUE CITATION <i>ISSUE CITATIONS ON SECOND AMENDED PETITION. SLA</i>		
08/12/2015	AMENDED PETITION <i>1ST</i>		
08/17/2015	CANCELED Status Conference (1:30 PM) (Judicial Officer GINSBERG, CARL) <i>BY COURT ADMINISTRATOR</i>		
08/24/2015	AMENDED PETITION <i>2ND</i>		
09/09/2015	CITATION <i>SECOND AMENDED</i> GLENN, CAROLINA J	Served Returned	09/21/2015 09/25/2015
	AMICA MUTUAL INSURANCE COMPANY	Served Returned	09/23/2015 10/02/2015
09/09/2015	CITATION ISSUED		
09/25/2015	RETURN OF SERVICE <i>RETURN OF SERVICE - CAROLINA GREEN</i>		
10/02/2015	RETURN OF SERVICE <i>RETURN OF SERVICE- AMICA INSURANCE</i>		
10/09/2015	ORIGINAL ANSWER - GENERAL DENIAL		
10/09/2015	JURY DEMAND		
10/19/2015	CANCELED Status Conference (1:30 PM) (Judicial Officer GINSBERG, CARL) <i>BY COURT ADMINISTRATOR</i>		
03/22/2016	Jury Trial - Civil (9:30 AM) (Judicial Officer GINSBERG, CARL)		

FINANCIAL INFORMATION

	DEFENDANT GLENN, CAROLINA J	
	Total Financial Assessment	30.00
	Total Payments and Credits	30.00
	Balance Due as of 10/20/2015	0.00
10/09/2015	Transaction Assessment	30.00
10/09/2015	CREDIT CARD - TEXFILE Receipt # 60415-2015-DCLK (DC)	(30.00)
	PLAINTIFF DAVIS, FELICIA D.	
	Total Financial Assessment	331.00
	Total Payments and Credits	331.00
	Balance Due as of 10/20/2015	0.00
03/23/2015	Transaction Assessment	315.00
03/23/2015	CREDIT CARD - TEXFILE Receipt # 16583-2015-DCLK (DC)	(315.00)
08/14/2015	Transaction Assessment	16.00
08/14/2015	CREDIT CARD - TEXFILE Receipt # 47845-2015-DCLK (DC)	(16.00)

Tonya Pointer

CAUSE NO. DC-15-03183

FELICIA D. DAVIS; § **IN THE DISTRICT COURT OF**
§
Plaintiff, §
§
§
VS. § **DALLAS COUNTY, TEXAS**
§
§
EDUARDO VARGAS REYES; §
§
§
Defendant. § **JUDICIAL DISTRICT**

**PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE,
FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR ADMISSIONS,
FIRST REQUEST FOR PRODUCTION AND REQUEST FOR PRIVILEGE LOG
TO DEFENDANT**

TO THE HONORABLE COURT:

COMES NOW FELICIA DAVIS, Plaintiff, complaining of Eduardo Vargas Reyes, Defendant, and respectfully shows the Honorable Court and Jury as follows:

I.

DISCOVERY CONTROL PLAN

Discovery is intended to be conducted under Level 3 pursuant to Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE.

II.

REMOVAL FROM EXPEDITED TRIAL

As required by Rule 47(b), Texas Rules of Civil Procedure, Plaintiff's counsel states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c), Texas Rules of Civil Procedure,

Plaintiff's counsel states that Plaintiff seeks monetary relief of over \$100,000 but not more than \$200,000. The amount of monetary relief actually awarded, however, will ultimately be determined by a jury. Plaintiff also seeks pre-judgment and post-judgment interest at the highest legal rate.

III.

PARTIES

Plaintiff Felicia Davis is a resident of Grand Prairie, Dallas County, Texas. Her driver's license number is ***** 860 and her social security number is ***-**-* 129.

Defendant Eduardo Vargas Reyes is an individual resident of Dallas, Dallas County, Texas and may be served with process at 3113 Chihuahua Avenue, Dallas, Texas 75212.

IV.

JURISDICTION AND VENUE

The Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of this Honorable Court.

This Court has venue over the parties to this action because the collision in question occurred in Dallas County, Texas. Venue therefore, is proper in Dallas County, Texas pursuant to the TEXAS CIVIL PRACTICE & REMEDIES CODE §15.002.

V.

FACTS

This lawsuit arises as a result of a motor vehicle collision that occurred on Monday, October 14, 2013, in the 100 block of East R.L. Thornton Freeway near Lamar Street in Dallas, Dallas County, Texas. At the time and on the occasion in question, Plaintiff Felicia Davis was driving her vehicle eastbound on the East R.L. Thornton Freeway bridge in the inside left lane. Defendant Eduardo Vargas Reyes was driving his vehicle eastbound on the East R.L. Thornton Freeway bridge in the outside right lane. As both vehicles were coming around a curve in the road, Defendant Eduardo Vargas Reyes lost control of his vehicle and slid left colliding hard with the right back passenger side of Plaintiff's vehicle and then colliding a second time with the right front passenger side of Plaintiff's vehicle. The force of the impacts pushed Plaintiff's vehicle to the left causing the left driver's side of Plaintiff's vehicle to crash into the guardrail. As a result of the collision, Plaintiff Felicia Davis was injured and continues to suffer injuries and damages from this incident.

VI.

CAUSES OF ACTION

At the time of the collision, Defendant Eduardo Vargas Reyes was operating his vehicle negligently. Specifically, Defendant had a duty to exercise ordinary care and operate his vehicle reasonably and prudently. Defendant breached that duty in one or more of the following respects:

1. Defendant failed to keep such proper lookout and attention to the roadway as a person of ordinary prudence would have kept under the same or similar circumstances.
2. Defendant was driving at an excessive speed for the existing circumstances;
3. Defendant failed to control his vehicle;
4. Defendant failed to timely apply the brakes of his vehicle in order to avoid the collision in question; and
5. Defendant failed to keep an assured safe distance from Plaintiff's vehicle.

Each of the above and foregoing acts and omissions, singularly or in combination, constituted the negligence that was the proximate cause of the motor vehicle collision and consequently the injuries and damages of Plaintiff.

VII.

DAMAGES

As a proximate result of Defendant's negligence, Plaintiff suffered extensive injuries and damages. As a result of Plaintiff's injuries, Plaintiff suffered the following damages:

- a. Medical expenses in the past and future;
- b. Lost wages in the past and loss of earning capacity in the future;
- c. Physical pain and suffering in the past and future;
- d. Mental anguish in the past and future; and
- e. Physical impairment in the past and future.

VIII.

REQUEST FOR DISCLOSURE

Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE the Defendant is requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a)-(l).

IX.

DISCOVERY DOCUMENTS

Contemporaneously with this petition, Plaintiff serves Plaintiff's First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to the Defendant Eduardo Vargas Reyes.

X.

INTENT TO USE DISCOVERY DOCUMENTS

Plaintiff hereby gives notice of intent to utilize items produced in discovery against the party producing same. The authenticity of such items is self-proven per TRCP 193.7.

XI.

U.S. LIFE TABLES

Notice is hereby given to the Defendant that Plaintiff intends to use the U.S. Life Tables as prepared by the Department of Health and Human Services.

XII.

JURY TRIAL

Plaintiff demands a trial by jury and includes the appropriate jury fees.

XIII.

RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendant be cited to appear and answer herein, and that upon final hearing thereof, Plaintiff recover judgment against Defendant for:

1. Plaintiff's past medical expenses, which are reasonable and customary for the medical care received by Plaintiff;
2. Plaintiff's future medical expenses;
3. Plaintiff's lost wages in the past and loss of earning capacity in the future;
4. Plaintiff's mental anguish in the past and future in an amount to be determined by the jury;
5. Plaintiff's physical pain and suffering in the past and future in an amount to be determined by the jury;
6. Plaintiff's physical impairment in the past and future in an amount to be determined by the jury;
7. Interest on the judgment at the legal rate from the date of judgment;
8. Pre-judgment interest on Plaintiff's damages as allowed by law;
9. All costs of court; and
10. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

EBERSTEIN & WITHERITE, LLP

By: /s/ Javier Gonzalez
JAVIER GONZALEZ
State Bar No. 24027331
jgonzalez@ewlawyers.com
AMY K. WITHERITE
State Bar NO. 00788698
awitherite@ewlawyers.com
3100 Monticello Avenue, Suite 500
Dallas, Texas 75205
(214) 378-6665
(214) 378-6670 (fax)

ATTORNEYS FOR PLAINTIFF

CIVIL CASE INFORMATION SHEET

Case 3:15-cv-03382-D Document 183-1 Filed 10/20/15 Page 12 of 64 PageID 22
CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED _____

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:	Person or entity completing sheet is:
Name:	Email:	Plaintiff(s)/Petitioner(s): _____ _____ _____	<input type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____
Address:	Telephone:	Defendant(s)/Respondent(s): _____ _____ _____	Additional Parties in Child Support Case: _____ _____
City/State/Zip:	Fax:	_____ _____ _____	Custodial Parent: _____ _____
Signature:	State Bar No:	_____ _____ _____	Non-Custodial Parent: _____ _____
[Attach additional page as necessary to list all parties]			

2. Indicate case type, or identify the most important issue in the case (select only 1):

<i>Civil</i>			<i>Family Law</i>	
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: <input type="checkbox"/> Employment <input type="checkbox"/> Tax	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order
		Related to Criminal Matters	Other Family Law	Parent-Child Relationship
		<input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
		Other Civil		
		<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____	
		Probate & Mental Health		
		Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings	<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____	

3. Indicate procedure or remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
4. Indicate damages sought (do not select if it is a family law case):		
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000		



FELICIA PITRE

DALLAS COUNTY DISTRICT CLERK

NINA MOUNTIQUE
CHIEF DEPUTY

CAUSE NO. DC-15-03183

FELICIA DAVIS

VS.

EDUARDO REYES

193rd District Court

ENTER DEMAND FOR JURY

JURY FEE PAID BY: PLAINTIFF

FEE PAID: \$30

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

**EDUARDO VARGAS REYES
3113 CHIHUAHUA AVENUE
DALLAS TX 75212**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **193rd District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **FELICIA D. DAVIS**

Filed in said Court **19th day of March, 2015** against

EDUARDO VARGAS REYES

For Suit, said suit being numbered **DC-15-03183**, the nature of which demand is as follows:

Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **REQ FOR DISCLOSURE, INTERROGATORIES, REQ FOR ADMISSIONS AND REQ FOR PRODUCTION**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 4th day of April, 2015.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By /s/ Shelia Bradley, Deputy
SHELIA BRADLEY



ESERVE

CITATION

DC-15-03183

FELICIA D DAVIS
vs.
EDUARDO VARGAS REYES

ISSUED THIS
4th day of April, 2015

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: **SHELIA BRADLEY**, Deputy

Attorney for Plaintiff
AMY K WITHERITE
MLEE@ELAWYERS.COM
500 E 4TH ST #200
FT WORTH TX 76102
817-336-5533

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-15-03183

Court No.193rd District Court

Style: FELICIA D DAVIS

vs.

EDUARDO VARGAS REYES

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____.M. Executed at _____, within the County of _____ at _____ o'clock _____.M. on the _____ day of _____, 20_____, by delivering to the within named _____

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation \$_____

For mileage \$_____ of _____ County, _____

For Notary \$_____ By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____, to certify which witness my hand and seal of office.

Notary Public _____ County _____



DC-15-03183

FELICIA DAVIS

vs.

EDUARDO REYES

IN THE DISTRICT COURT

193RD JUDICIAL DISTRICT

DALLAS COUNTY TEXAS

NOTICE OF INITIAL DISMISSAL HEARING

Counsel or Pro Se Plaintiff:

This case is set for a hearing on the Initial Dismissal Docket, as per Tex. R. Civ. P. 165a, for **THURSDAY, July 09, 2015**, at 1:30 p.m. in the 193rd District Court Courtroom.

1. If no Defendant has been served as evidenced by no return of citation having been filed with the court on or before the Dismissal Hearing, the case is subject to being dismissed at the Dismissal Hearing;
2. If service has been made on a Defendant, but no answer has been filed (and any such answer is past due before the Dismissal Hearing Date), you must obtain a default judgment on or before the Dismissal Hearing, or the case is subject to being dismissed at the Dismissal Hearing. You are encouraged to submit requests for default by submission with affidavit.
3. If service on at least one Defendant has been made and the citation has been returned to the Court before the Dismissal Hearing, but the time to file an answer has not yet expired, then the Dismissal Hearing is hereby reset for the Friday four weeks following the initial date of the Dismissal Hearing (*i.e.* the date listed above). (If this Friday falls on a holiday, the Dismissal Hearing is reset to the next Friday that is not a holiday.) No further dismissal notice will be sent, and you are expected to obtain a default judgment before the reset date of the Dismissal Hearing, or the case is subject to being dismissed.
4. If an answer is filed on or before the Dismissal Hearing, the case will be referred to the Court Coordinator to be set for trial, if not already set.

SIGNED this April 07, 2015

A handwritten signature in black ink, appearing to read "Carl Ginsberg".

The Honorable Carl Ginsberg
193rd Judicial District Court

Cause No. DC-15-03183

FELICIA D. DAVIS

IN THE DISTRICT COURT

VS.

193RD JUDICIAL DISTRICT

EDUARDO VARGAS REYES

DALLAS COUNTY, TEXAS

RETURN OF SERVICE

Came to hand on the 14th day of APRIL, 2015 at 12:00 P.m. and executed
 at 3113 CHIHUAHUA ST. — DALLAS, TX 75212,
 (Address) (Apt#) (City) (State) (Zip Code)
 within the county of DALLAS on the 15th day of APRIL, 2015 at
5:20 P.m. by delivering to **EDUARDO VARGAS REYES**, in person, a true copy of the
 Citation together with a true and correct copy of the Plaintiff's Original Petition, Request for
 Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for
 Production and Request for Privilege Log to Defendant filed in this cause, having first endorsed
 thereupon the date of delivery.

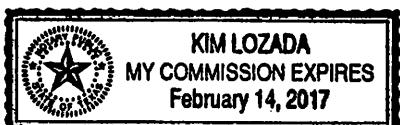
By: Kim Lozada

Private Process Server

SCH# 804 Expires: 9/30/17VERIFICATION

BEFORE ME, a Notary Public, on this day personally appeared
KIM LOZADA known to be the person whose name is subscribed to the
 foregoing document and being by me first duly sworn, declared that the statements therein
 contained are true and correct and that he is not a party to this lawsuit and has no interest in the
 outcome. Given under my hand and seal of office this 15th day of APRIL, 2015.

Notary Public, State of Texas



**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

**EDUARDO VARGAS REYES
3113 CHIHUAHUA AVENUE
DALLAS TX 75212**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 193rd District Court at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **FELICIA D. DAVIS**

Filed in said Court **19th day of March, 2015** against

EDUARDO VARGAS REYES

For Suit, said suit being numbered **DC-15-03183**, the nature of which demand is as follows:
Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **REQ FOR DISCLOSURE, INTERROGATORIES, REQ FOR ADMISSIONS AND REQ FOR PRODUCTION**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 4th day of April, 2015.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By /s/ Shelia Bradley, Deputy
SHELIA BRADLEY



ESERVE

CITATION

DC-15-03183

FELICIA D DAVIS
vs.
EDUARDO VARGAS REYES

**ISSUED THIS
4th day of April, 2015**

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: SHELIA BRADLEY, Deputy

Attorney for Plaintiff
AMY K WITHERITE
MLEE@ELAWYERS.COM
500 E 4TH ST #200
FT WORTH TX 76102
817-336-5533

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-15-03183

Court No.193rd District Court

Style: FELICIA D DAVIS

vs.

EDUARDO VARGAS REYES

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____. M. Executed at _____, within the County of _____ at _____ o'clock _____. M. on the _____ day of _____, 20_____, by delivering to the within named _____

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation \$ _____

For mileage \$ _____

of _____ County, _____

For Notary \$ _____

By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____, to certify which witness my hand and seal of office.

Notary Public _____ County _____



**IN THE DISTRICT COURT
193RD JUDICIAL DISTRICT
DALLAS COUNTY TEXAS**

7/8/2015

File Copy
No Known Address

In Re:DC-15-03183
FELICIA DAVIS vs. EDUARDO REYES

NOTICE OF STATUS CONFERENCE

The above-referenced matter has been on the Court's docket for two months with no activity. Because of this, please be advised that the above-referenced matter is hereby set for a status conference/dismissal hearing at:

August 17, 2015 at 1:30 p.m.

Failure to appear at this hearing may result in the dismissal of this matter for want of prosecution pursuant to Texas Rules of Civil Procedure 165a and the Court's inherent power.

SIGNED this July 08, 2015

A handwritten signature in black ink that reads "Carl Ginsberg".

The Honorable Carl Ginsberg
193rd Judicial District Court



**IN THE DISTRICT COURT
193RD JUDICIAL DISTRICT
DALLAS COUNTY TEXAS**

7/8/2015

EDUARDO VARGAS REYES
3113 CHIHUAHUA AVENUE
DALLAS TX 75212

In Re:DC-15-03183
FELICIA DAVIS vs. EDUARDO REYES

NOTICE OF STATUS CONFERENCE

The above-referenced matter has been on the Court's docket for two months with no activity. Because of this, please be advised that the above-referenced matter is hereby set for a status conference/dismissal hearing at:

August 17, 2015 at 1:30 p.m.

Failure to appear at this hearing may result in the dismissal of this matter for want of prosecution pursuant to Texas Rules of Civil Procedure 165a and the Court's inherent power.

SIGNED this July 08, 2015

A handwritten signature in black ink that reads "Carl Ginsberg".

The Honorable Carl Ginsberg
193rd Judicial District Court



**IN THE DISTRICT COURT
193RD JUDICIAL DISTRICT
DALLAS COUNTY TEXAS**

7/8/2015

AMY K WITHERITE
3100 MONTICELLO AVE
#500
DALLAS TX 75205

In Re:DC-15-03183
FELICIA DAVIS vs. EDUARDO REYES

NOTICE OF STATUS CONFERENCE

The above-referenced matter has been on the Court's docket for two months with no activity. Because of this, please be advised that the above-referenced matter is hereby set for a status conference/dismissal hearing at:

August 17, 2015 at 1:30 p.m.

Failure to appear at this hearing may result in the dismissal of this matter for want of prosecution pursuant to Texas Rules of Civil Procedure 165a and the Court's inherent power.

SIGNED this July 08, 2015

A handwritten signature in black ink, appearing to read "Carl Ginsberg".

The Honorable Carl Ginsberg
193rd Judicial District Court

Tonya Pointer

CAUSE NO. DC-15-03183

FELICIA D. DAVIS

IN THE DISTRICT COURT

Plaintiff,

VS.

DALLAS COUNTY, TEXAS

**EDUARDO VARGAS-REYES; AMICA
MUTUAL INSURANCE COMPANY AND
CAROLINA J. GLENN**

Defendants.

193RD JUDICIAL DISTRICT

**PLAINTIFF'S FIRST AMENDED PETITION AND REQUEST FOR
DISCLOSURE, FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR
ADMISSIONS, FIRST REQUEST FOR PRODUCTION AND REQUEST FOR
PRIVILEGE LOG TO DEFENDANTS**

TO THE HONORABLE COURT:

Plaintiff Felicia D. Davis files Plaintiff's First Amended Petition complaining of Defendants Eduardo Vargas-Reyes; Amica Mutual Insurance Company And Carolina J. Glenn.

I. DISCOVERY CONTROL PLAN

Discovery is intended to be conducted under Level 3 pursuant to Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE.

II. EXPEDITED TRIAL RULE

As required by Rule 47(b), Texas Rules of Civil Procedure, Plaintiff's counsel states that the damages sought are in an amount within the jurisdictional limits of this Court. As required by Rule 47(c), Texas Rules of Civil Procedure, Plaintiff's counsel states that Plaintiff seeks monetary relief of over

\$100,000, but not more than \$200,000. The amount of monetary relief actually awarded, however, will ultimately be determined by a jury. Plaintiff also seeks pre-judgment and post-judgment interest at the highest legal rate.

III. PARTIES

Plaintiff Felicia D. Davis is an individual resident of Grand Prairie, Dallas County, Texas. Her driver's license number is *****860 and her social security number is ***-**-*129.

Defendant Eduardo Vargas Reyes is an individual resident of Dallas, Dallas County, Texas. Plaintiff's claims against Eduardo Vargas-Reyes have been settled.

Defendant Amica Mutual Insurance Company is an insurance company licensed to do business in the State of Texas, and said corporation is engaged in writing insurance in Texas. Defendant Amica Mutual Insurance Company may be served with process by serving its registered agent, Robert R. Foss Jr., 2277 Plaza Drive, # 400, Sugar Land, Texas 77479, Dallas, TX 75224.

Defendant Carolina J. Glenn is an individual resident of Dallas, Dallas County, TX. Defendant may be served with process at 2427 Allen Street, # 223, Dallas, TX 75204.

IV. JURISDICTION AND VENUE

The court has jurisdiction over the cause because the amount in controversy is within the jurisdictional limits of the court.

The court has jurisdiction over each Defendant because the causes of action arise out of the business Defendant conducted in Texas.

This Court has venue over the parties to this action since the incident complained of herein occurred in Dallas County, Texas. Venue therefore, is proper in Dallas County, Texas pursuant to the TEXAS CIVIL PRACTICE & REMEDIES CODE §15.002

V. FACTS

This lawsuit arises as a result of a motor vehicle collision that occurred on Monday, October 14, 2013, in the 100 block of East R.L. Thornton Freeway near Lamar Street in Dallas, Dallas County, Texas. At the time and on the occasion in question, Plaintiff Felicia Davis was driving her vehicle eastbound on the East R.L. Thornton Freeway bridge in the inside left lane. Defendant Eduardo Vargas Reyes, an underinsured driver, was driving his vehicle eastbound on the East R.L. Thornton Freeway's bridge in the outside right lane. As both vehicles were coming around a curve in the road, Defendant Eduardo Vargas-Reyes, the underinsured driver, lost control of his vehicle and slid left colliding hard with the right back passenger side of Plaintiff's vehicle and then colliding a second time with the right front passenger side of Plaintiff's vehicle. The force of the impacts pushed Plaintiff's vehicle to the left causing the left driver's side of Plaintiff's vehicle to crash into the guardrail. As a result of the collision, Plaintiff Felicia Davis was injured and continues to suffer injuries and damages from this incident.

At the time in question, Felicia D. Davis was acting in a reasonable and prudent manner when Eduardo Vargas-Reyes, an underinsured motorist, committed a number of acts of negligence during the operation and use of a motor vehicle, which served as a proximate cause of the motor vehicle collision and injuries complained of herein. Eduardo Vargas-Reyes acts of negligence were as follows:

1. Eduardo Vargas-Reyes failed to keep such proper lookout and attention to the roadway as a person of ordinary prudence would have kept under the same or similar circumstances.
2. Eduardo Vargas-Reyes was driving at an excessive speed for the existing circumstances;
3. Eduardo Vargas-Reyes failed to control his vehicle;
4. Eduardo Vargas-Reyes failed to timely apply the brakes of his vehicle in order to avoid the collision in question; and
5. Eduardo Vargas-Reyes failed to keep an assured safe distance from Plaintiff's vehicle.

Each of the above and foregoing acts and omissions, singularly or in combination, constituted the negligence that was the proximate cause of the motor vehicle collision and consequently the injuries and damages of Plaintiff.

VI. CONDITIONS PRECEDENT

Plaintiff asserts that all conditions precedent to the bringing of these causes of action have been performed or have occurred prior to the filing of the causes of action at bar.

At all relevant times, Plaintiff was insured under an automobile insurance policy with Defendant Amica Mutual Insurance Company, Policy No.

9401421766, which insured Plaintiff in the event she was damaged or injured by the negligence of an under insured motorist. Plaintiff has complied with all the terms and conditions of the policy prior to bringing this action. Plaintiff would show that at the time of trial of this matter she will offer into evidence a copy of said policy, unless the original of the same is produced by Defendant Amica Mutual Insurance Company, at said trial. In this regard, Plaintiff would show that Eduardo Vargas-Reyes was in fact an underinsured motorist as defined by law and the policy in question.

Plaintiff presented her claim for underinsured motorist benefits under the contract of insurance with Amica Mutual Insurance Company. Plaintiff pleads that all conditions precedent to filing suit have been complied with, including the statutory notice provision. Plaintiff presented to Defendants a demand for payment of her claim under the policy. In response to Plaintiff's demand for the policy limits in the amount of \$30,000.00, Defendant Amica Mutual Insurance Company, acting through its agent Jennifer Carolina J. Glenn declined to make an offer of settlement of Plaintiff Felicia D. Davis' claim under the underinsured motorists provision of the Insurance Policy.

VII. DECLARATORY RELIEF

Plaintiff asserts claims under Texas Civil Practice and Remedies Code 37.001, *et seq.* to have her rights, status, and other legal relationships under the Insurance Policy she purchased from Defendant Amica Mutual Insurance Company, established by a court of competent jurisdiction. Plaintiff seeks a

declaration from the Court that:

A. The negligence of Eduardo Vargas-Reyes in that automobile wreck was the proximate cause of bodily injuries and damages to Plaintiff, which injuries include the following:

1. Reasonable and necessary health care expenses incurred in the past;
2. Reasonable and necessary health care expenses, which in all reasonable probability, will be incurred in the future;
3. Loss of earnings in the past;
4. Loss of earning capacity in the future;
5. Property damage and loss of use of Plaintiff's vehicle;
6. Physical pain and suffering in the past;
7. Physical pain and suffering which, in all reasonable probability, will be endured in the future;
8. Mental anguish suffered in the past;
9. Mental anguish which, in all reasonable probability, will be suffered in the future;
10. Physical impairment suffered in the past; and
11. Physical impairment which, in all reasonable probability, will be suffered in the future.

B. Plaintiff's claim for under insured motorist benefits under Policy No. 9401421766, (hereafter the "Insurance Policy") as a result of a car wreck that occurred on October 14, 2013, is covered under the Insurance Policy;

C. Plaintiff also seeks a declaration determining the amount of under insured motorist benefits that she is entitled to recover from Defendant Amica

Mutual Insurance Company, after all applicable set-offs and credits, for each of the following elements of damages covered under the Insurance Policy:

1. Reasonable and necessary health care expenses incurred in the past;
2. Reasonable and necessary health care expenses, which in all reasonable probability, will be incurred in the future;
3. Lost wages in the past;
4. Loss of earning capacity in the future;
5. Property damage and loss of use of Plaintiff's vehicle;
6. Physical pain and suffering in the past;
7. Physical pain and suffering which, in all reasonable probability, will be endured in the future;
8. Mental anguish suffered in the past;
9. Mental anguish which, in all reasonable probability, will be suffered in the future;
10. Physical impairment suffered in the past; and
11. Physical impairment which, in all reasonable probability, will be suffered in the future.

Pursuant to §37.009 of the Texas Civil Practice and Remedies Code, Plaintiff seeks all costs and reasonable and necessary attorneys' fees, as are equitable and just, which are incurred or which may be incurred in this matter including all such fees and expenses:

- a. For preparation and trial;
- b. For an appeal to the Court of Appeals;
- c. For making or responding to an application for writ of error to

the Supreme Court of Texas; and

- d. If application for writ of error is granted by the Supreme Court of Texas.

Plaintiff now asks the Court, pursuant to the Texas Declaratory Judgments Act §37.001 *et. seq.*, for a declaration that her injuries and damages fall within the coverage of the Insurance Policy issued by Defendant Amica Mutual Insurance Company and for a declaration of her rights to such benefits and judgment against Defendant.

VIII. DAMAGES

Plaintiff alleges that as a direct and proximate result of the conduct and negligent acts and omissions of the under insured motorist, Plaintiff is entitled to recover at least the following damages from Defendant Amica Mutual Insurance Company:

- a. Reasonable and necessary health care expenses incurred in the past;
- b. Reasonable and necessary health care expenses, which in all reasonable probability, will be incurred in the future;
- c. Lost wages in the past;
- d. Loss of earning capacity in the future;
- e. Property damage and loss of use of Plaintiff's vehicle;
- f. Physical pain and suffering in the past;
- g. Physical pain and suffering which, in all reasonable probability, will be endured in the future;
- h. Mental anguish suffered in the past;

- i. Mental anguish which, in all reasonable probability, will be suffered in the future;
- j. Physical impairment suffered in the past; and
- k. Physical impairment which, in all reasonable probability, will be suffered in the future.

IX. ATTORNEYS' FEES

Because of the conduct of Defendant, Plaintiff has been forced to engage the services of an attorney to prosecute this action. Plaintiff is entitled to recover a reasonable sum for the necessary services of the attorneys in the preparation and trial of this action and for any appeals to the court of appeals or the Texas Supreme Court. Therefore, an award of reasonable attorneys' fees is authorized by §37.009 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

X. INTEREST

Plaintiff is also entitled to pre-judgment and post-judgment interest and costs of Court as allowed by law.

XI. U.S. LIFE TABLES

Notice is hereby given to the Defendant that Plaintiff intends to use the U.S. Life Tables as prepared by the Department of Health and Human Services.

XII. REQUEST FOR JURY TRIAL

Plaintiff demands a trial by jury and includes the appropriate jury fee.

XIII. REQUEST FOR DISCLOSURE

Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE the Defendant is requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a)-(l).

XIV. DISCOVERY DOCUMENTS

Contemporaneously with this petition, Plaintiff serves to Defendant Plaintiff's First Set of Interrogatories, First Request for Admissions, and First Request for Production to Defendant Amica Mutual Insurance Company

XV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer herein, and that upon final hearing thereof, Plaintiff recover judgment against Defendants for:

1. Plaintiff's past medical expenses, which are reasonable and customary for the medical care received by Plaintiff;
2. Plaintiff's future medical expenses;
3. Plaintiff's lost wages in the past and loss of earning capacity in the future;
4. Plaintiff's physical pain and suffering in the past and future in an amount to be determined by the jury;
5. Plaintiff's mental anguish in the past and future in an amount to be determined by the jury;
6. Plaintiff's physical impairment in the past and future in an amount to be determined by the jury;
7. Plaintiff's property damage and loss of use of Plaintiff's vehicle;
8. Interest on the judgment at the legal rate from the date of judgment;
9. Pre-judgment interest on Plaintiff's damages as allowed by law;

10. All costs of court; and
11. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

EBERSTEIN & WITHERITE, LLP

BY: */s/ Javier Gonzalez*
JAVIER GONZALEZ
State Bar No. 24027331
jgonzalez@ewlawyers.com
AMY K. WITHERITE
State Bar No. 00788698
awitherite@ewlawyers.com
3100 Monticello Avenue, Suite 500
Dallas, Texas 75205
214/378-6665
214/378-6670 (fax)

ATTORNEYS FOR PLAINTIFF



**IN THE DISTRICT COURT
193RD JUDICIAL DISTRICT
DALLAS COUNTY TEXAS**

8/17/2015

File Copy
No Known Address

In Re:DC-15-03183
FELICIA DAVIS vs. EDUARDO REYES

NOTICE OF STATUS CONFERENCE

The above-referenced matter has been on the Court's docket for two months with no activity. Because of this, please be advised that the above-referenced matter is hereby set for a status conference/dismissal hearing at:

October 19, 2015 at 1:30 p.m.

Failure to appear at this hearing may result in the dismissal of this matter for want of prosecution pursuant to Texas Rules of Civil Procedure 165a and the Court's inherent power.

SIGNED this August 17, 2015

A handwritten signature in black ink, appearing to read "Carl Ginsberg".

The Honorable Carl Ginsberg
193rd Judicial District Court



**IN THE DISTRICT COURT
193RD JUDICIAL DISTRICT
DALLAS COUNTY TEXAS**

8/17/2015

EDUARDO VARGAS REYES
3113 CHIHUAHUA AVENUE
DALLAS TX 75212

In Re:DC-15-03183
FELICIA DAVIS vs. EDUARDO REYES

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The Honorable Carl Ginsberg
193rd Judicial District Court



**IN THE DISTRICT COURT
193RD JUDICIAL DISTRICT
DALLAS COUNTY TEXAS**

8/17/2015

AMICA MUTUAL INSURANCE COMPANY
2277 PLAZA DRIVE #400
SUGAR LAND TX 77479

In Re:DC-15-03183
FELICIA DAVIS vs. EDUARDO REYES

NOTICE OF STATUS CONFERENCE

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The Honorable Carl Ginsberg
193rd Judicial District Court



**IN THE DISTRICT COURT
193RD JUDICIAL DISTRICT
DALLAS COUNTY TEXAS**

8/17/2015

AMY K WITHERITE
3100 MONTICELLO AVE
#500
DALLAS TX 75205

In Re:DC-15-03183
FELICIA DAVIS vs. EDUARDO REYES

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The Honorable Carl Ginsberg
193rd Judicial District Court



**IN THE DISTRICT COURT
193RD JUDICIAL DISTRICT
DALLAS COUNTY TEXAS**

8/17/2015

CAROLINA J GLENN
2427 ALLEN STREET #223
DALLAS TX 75204

In Re:DC-15-03183
FELICIA DAVIS vs. EDUARDO REYES

NOTICE OF STATUS CONFERENCE

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SIGNED this August 17, 2015

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The Honorable Carl Ginsberg
193rd Judicial District Court

CAUSE NO. DC-15-03183

FELICIA D. DAVIS

IN THE DISTRICT COURT

Plaintiff,

VS.

DALLAS COUNTY, TEXAS

**EDUARDO VARGAS-REYES; AMICA
MUTUAL INSURANCE COMPANY AND
CAROLINA J. GLENN**

Defendants.

193RD JUDICIAL DISTRICT

**PLAINTIFF'S SECOND AMENDED PETITION AND REQUEST FOR
DISCLOSURE, FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR
ADMISSIONS, FIRST REQUEST FOR PRODUCTION AND REQUEST FOR
PRIVILEGE LOG TO DEFENDANTS**

TO THE HONORABLE COURT:

Plaintiff Felicia D. Davis files Plaintiff's Second Amended Petition
complaining of Defendants Amica Mutual Insurance Company And Carolina J.
Glenn.

I. DISCOVERY CONTROL PLAN

Discovery is intended to be conducted under Level 3 pursuant to Rule 190
of the TEXAS RULES OF CIVIL PROCEDURE.

II. EXPEDITED TRIAL RULE

As required by Rule 47(b), Texas Rules of Civil Procedure, Plaintiff's
counsel states that the damages sought are in an amount within the
jurisdictional limits of this Court. As required by Rule 47(c), Texas Rules of Civil
Procedure, Plaintiff's counsel states that Plaintiff seeks monetary relief of over

\$100,000, but not more than \$200,000. The amount of monetary relief actually awarded, however, will ultimately be determined by a jury. Plaintiff also seeks pre-judgment and post-judgment interest at the highest legal rate.

III. PARTIES

Plaintiff Felicia D. Davis is an individual resident of Grand Prairie, Dallas County, Texas. Her driver's license number is *****860 and her social security number is ***-**-*129.

Defendant Eduardo Vargas Reyes is an individual resident of Dallas, Dallas County, Texas. Plaintiff's claims against Eduardo Vargas-Reyes have been settled.

Defendant Amica Mutual Insurance Company is an insurance company licensed to do business in the State of Texas, and said corporation is engaged in writing insurance in Texas. Defendant Amica Mutual Insurance Company may be served with process by serving its registered agent, Robert R. Foss Jr., 2277 Plaza Drive, # 400, Sugar Land, Texas 77479, Dallas, TX 75224.

Defendant Carolina J. Glenn is an individual resident of Dallas, Dallas County, TX. Defendant may be served with process at 2427 Allen Street, # 223, Dallas, TX 75204.

IV. JURISDICTION AND VENUE

The court has jurisdiction over the cause because the amount in controversy is within the jurisdictional limits of the court.

The court has jurisdiction over each Defendant because the causes of action arise out of the business Defendant conducted in Texas.

This Court has venue over the parties to this action since the incident complained of herein occurred in Dallas County, Texas. Venue therefore, is proper in Dallas County, Texas pursuant to the TEXAS CIVIL PRACTICE & REMEDIES CODE §15.002

V. FACTS

This lawsuit arises as a result of a motor vehicle collision that occurred on Monday, October 14, 2013, in the 100 block of East R.L. Thornton Freeway near Lamar Street in Dallas, Dallas County, Texas. At the time and on the occasion in question, Plaintiff Felicia Davis was driving her vehicle eastbound on the East R.L. Thornton Freeway bridge in the inside left lane. Defendant Eduardo Vargas Reyes, an underinsured driver, was driving his vehicle eastbound on the East R.L. Thornton Freeway's bridge in the outside right lane. As both vehicles were coming around a curve in the road, Defendant Eduardo Vargas-Reyes, the underinsured driver, lost control of his vehicle and collided hard with the right back passenger side of Plaintiff's vehicle and then collided a second time with the right front passenger side of Plaintiff's vehicle. The force of the two impacts pushed Plaintiff's vehicle to the left causing the front of Plaintiff's vehicle to crash into the guardrail. As a result of these collisions and impacts, Plaintiff Felicia Davis was injured and continues to suffer injuries and damages from this incident.

At the time in question, Felicia D. Davis was acting in a reasonable and prudent manner when Eduardo Vargas-Reyes, an underinsured motorist, committed a number of acts of negligence during the operation and use of a motor vehicle, which served as a proximate cause of the motor vehicle collision and injuries complained of herein. Eduardo Vargas-Reyes acts of negligence were as follows:

1. Eduardo Vargas-Reyes failed to keep such proper lookout and attention to the roadway as a person of ordinary prudence would have kept under the same or similar circumstances.
2. Eduardo Vargas-Reyes was driving at an excessive speed for the existing circumstances;
3. Eduardo Vargas-Reyes failed to control his vehicle;
4. Eduardo Vargas-Reyes failed to timely apply the brakes of his vehicle in order to avoid the collision in question; and
5. Eduardo Vargas-Reyes failed to keep an assured safe distance from Plaintiff's vehicle.

Each of the above and foregoing acts and omissions, singularly or in combination, constituted the negligence that was the proximate cause of the motor vehicle collision and consequently the injuries and damages of Plaintiff.

VI. CONDITIONS PRECEDENT

Plaintiff asserts that all conditions precedent to the bringing of these causes of action have been performed or have occurred prior to the filing of the causes of action at bar.

At all relevant times, Plaintiff was insured under an automobile insurance policy with Defendant Amica Mutual Insurance Company, Policy No.

9401421766, which insured Plaintiff in the event she was damaged or injured by the negligence of an under insured motorist. Plaintiff has complied with all the terms and conditions of the policy prior to bringing this action. Plaintiff would show that at the time of trial of this matter she will offer into evidence a copy of said policy, unless the original of the same is produced by Defendant Amica Mutual Insurance Company, at said trial. In this regard, Plaintiff would show that Eduardo Vargas-Reyes was in fact an underinsured motorist as defined by law and the policy in question.

Plaintiff presented her claim for underinsured motorist benefits under the contract of insurance with Amica Mutual Insurance Company. Plaintiff pleads that all conditions precedent to filing suit have been complied with, including the statutory notice provision. Plaintiff presented to Defendants a demand for payment of her claim under the policy. In response to Plaintiff's demand for the policy limits in the amount of \$50,000.00, Defendant Amica Mutual Insurance Company, acting through its agent Jennifer Carolina J. Glenn declined to make an offer of settlement of Plaintiff Felicia D. Davis' claim under the underinsured motorists provision of the Insurance Policy.

VII. DECLARATORY RELIEF

Plaintiff asserts claims under Texas Civil Practice and Remedies Code 37.001, *et seq.* to have her rights, status, and other legal relationships under the Insurance Policy she purchased from Defendant Amica Mutual Insurance Company, established by a court of competent jurisdiction. Plaintiff seeks a

declaration from the Court that:

A. The negligence of Eduardo Vargas-Reyes in that automobile wreck was the proximate cause of bodily injuries and damages to Plaintiff, which injuries include the following:

1. Reasonable and necessary health care expenses incurred in the past;
2. Reasonable and necessary health care expenses, which in all reasonable probability, will be incurred in the future;
3. Loss of earnings in the past;
4. Loss of earning capacity in the future;
5. Property damage and loss of use of Plaintiff's vehicle;
6. Physical pain and suffering in the past;
7. Physical pain and suffering which, in all reasonable probability, will be endured in the future;
8. Mental anguish suffered in the past;
9. Mental anguish which, in all reasonable probability, will be suffered in the future;
10. Physical impairment suffered in the past; and
11. Physical impairment which, in all reasonable probability, will be suffered in the future.

B. Plaintiff's claim for under insured motorist benefits under Policy No. 9401421766, (hereafter the "Insurance Policy") as a result of a car wreck that occurred on October 14, 2013, is covered under the Insurance Policy;

C. Plaintiff also seeks a declaration determining the amount of under insured motorist benefits that she is entitled to recover from Defendant Amica

Mutual Insurance Company, after all applicable set-offs and credits, for each of the following elements of damages covered under the Insurance Policy:

1. Reasonable and necessary health care expenses incurred in the past;
2. Reasonable and necessary health care expenses, which in all reasonable probability, will be incurred in the future;
3. Lost wages in the past;
4. Loss of earning capacity in the future;
5. Property damage and loss of use of Plaintiff's vehicle;
6. Physical pain and suffering in the past;
7. Physical pain and suffering which, in all reasonable probability, will be endured in the future;
8. Mental anguish suffered in the past;
9. Mental anguish which, in all reasonable probability, will be suffered in the future;
10. Physical impairment suffered in the past; and
11. Physical impairment which, in all reasonable probability, will be suffered in the future.

Pursuant to §37.009 of the Texas Civil Practice and Remedies Code, Plaintiff seeks all costs and reasonable and necessary attorneys' fees, as are equitable and just, which are incurred or which may be incurred in this matter including all such fees and expenses:

- a. For preparation and trial;
- b. For an appeal to the Court of Appeals;
- c. For making or responding to an application for writ of error to

the Supreme Court of Texas; and

- d. If application for writ of error is granted by the Supreme Court of Texas.

Plaintiff now asks the Court, pursuant to the Texas Declaratory Judgments Act §37.001 *et. seq.*, for a declaration that her injuries and damages fall within the coverage of the Insurance Policy issued by Defendant Amica Mutual Insurance Company and for a declaration of her rights to such benefits and judgment against Defendant.

VIII. DAMAGES

Plaintiff alleges that as a direct and proximate result of the conduct and negligent acts and omissions of the under insured motorist, Plaintiff is entitled to recover at least the following damages from Defendant Amica Mutual Insurance Company:

- a. Reasonable and necessary health care expenses incurred in the past;
- b. Reasonable and necessary health care expenses, which in all reasonable probability, will be incurred in the future;
- c. Lost wages in the past;
- d. Loss of earning capacity in the future;
- e. Property damage and loss of use of Plaintiff's vehicle;
- f. Physical pain and suffering in the past;
- g. Physical pain and suffering which, in all reasonable probability, will be endured in the future;
- h. Mental anguish suffered in the past;

- i. Mental anguish which, in all reasonable probability, will be suffered in the future;
- j. Physical impairment suffered in the past; and
- k. Physical impairment which, in all reasonable probability, will be suffered in the future.

IX. ATTORNEYS' FEES

Because of the conduct of Defendant, Plaintiff has been forced to engage the services of an attorney to prosecute this action. Plaintiff is entitled to recover a reasonable sum for the necessary services of the attorneys in the preparation and trial of this action and for any appeals to the court of appeals or the Texas Supreme Court. Therefore, an award of reasonable attorneys' fees is authorized by §37.009 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

X. INTEREST

Plaintiff is also entitled to pre-judgment and post-judgment interest and costs of Court as allowed by law.

XI. U.S. LIFE TABLES

Notice is hereby given to the Defendant that Plaintiff intends to use the U.S. Life Tables as prepared by the Department of Health and Human Services.

XII. REQUEST FOR JURY TRIAL

Plaintiff demands a trial by jury and includes the appropriate jury fee.

XIII. REQUEST FOR DISCLOSURE

Pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE the Defendant is requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a)-(l).

XIV. DISCOVERY DOCUMENTS

Contemporaneously with this petition, Plaintiff serves to Defendant Plaintiff's First Set of Interrogatories, First Request for Admissions, and First Request for Production to Defendant Amica Mutual Insurance Company

XV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendants be cited to appear and answer herein, and that upon final hearing thereof, Plaintiff recover judgment against Defendants for:

1. Plaintiff's past medical expenses, which are reasonable and customary for the medical care received by Plaintiff;
2. Plaintiff's future medical expenses;
3. Plaintiff's lost wages in the past and loss of earning capacity in the future;
4. Plaintiff's physical pain and suffering in the past and future in an amount to be determined by the jury;
5. Plaintiff's mental anguish in the past and future in an amount to be determined by the jury;
6. Plaintiff's physical impairment in the past and future in an amount to be determined by the jury;
7. Plaintiff's property damage and loss of use of Plaintiff's vehicle;
8. Interest on the judgment at the legal rate from the date of judgment;
9. Pre-judgment interest on Plaintiff's damages as allowed by law;

10. All costs of court; and
11. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

EBERSTEIN & WITHERITE, LLP

BY: */s/ Javier Gonzalez*
JAVIER GONZALEZ
State Bar No. 24027331
jgonzalez@ewlawyers.com
AMY K. WITHERITE
State Bar No. 00788698
awitherite@ewlawyers.com
3100 Monticello Avenue, Suite 500
Dallas, Texas 75205
214/378-6665
214/378-6670 (fax)

ATTORNEYS FOR PLAINTIFF

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

**AMICA MUTUAL INSURANCE COMPANY
SERVING ITS REGISTERED AGENT, ROBERT R. FOSS JR.
2277 PLAZA DRIVE #400
SUGAR LAND TX 77479**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **SECOND AMENDED** petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **193rd District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **FELICIA D. DAVIS**

Filed in said Court **24th day of August, 2015** against

EDUARDO VARGAS-REYES; AMICA MUTUAL INSURANCE COMPANY AND CAROLINA J. GLENN

For Suit, said suit being numbered **DC-15-03183**, the nature of which demand is as follows:
Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **REQ FOR DISCLOSURE, INTERROGATORIES, REQ FOR ADMISSIONS AND REQ FOR PRODUCTION**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 9th day of September, 2015.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By /s/ Shelia Bradley, Deputy
SHELIA BRADLEY



ESERVE

CITATION

DC-15-03183

FELICIA D DAVIS

vs.

EDUARDO VARGAS-REYES, et al

ISSUED THIS
9th day of September, 2015

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: **SHELIA BRADLEY**, Deputy

Attorney for Plaintiff
AMY K WITHERITE
3100 MONTICELLO AVE
SUITE 500
DALLAS TX 75205
214-378-6665

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-15-03183

Court No.193rd District Court

Style: FELICIA D DAVIS

vs.

EDUARDO VARGAS-REYES, et al

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____.M. Executed at _____, within the County of _____ at _____ o'clock _____.M. on the _____ day of _____, 20_____, by delivering to the within named _____

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation \$_____

For mileage \$_____ of _____ County, _____

For Notary \$_____ By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____, to certify which witness my hand and seal of office.

Notary Public _____ County _____

**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

**CAROLINA J. GLENN
2427 ALLEN STREET, # 223
DALLAS, TX 75204**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **SECOND AMENDED** petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **193rd District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **FELICIA D. DAVIS**

Filed in said Court **24th day of August, 2015** against

EDUARDO VARGAS-REYES; AMICA MUTUAL INSURANCE COMPANY AND CAROLINA J. GLENN

For Suit, said suit being numbered **DC-15-03183**, the nature of which demand is as follows:
Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **REQ FOR DISCLOSURE, INTERROGATORIES, REQ FOR ADMISSIONS AND REQ FOR PRODUCTION**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 9th day of September, 2015.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By /s/ Shelia Bradley, Deputy
SHELIA BRADLEY



ESERVE

CITATION

DC-15-03183

FELICIA D DAVIS

vs.

EDUARDO VARGAS-REYES, et al

ISSUED THIS
9th day of September, 2015

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: **SHELIA BRADLEY**, Deputy

Attorney for Plaintiff
AMY K WITHERITE
3100 MONTICELLO AVE
SUITE 500
DALLAS TX 75205
214-378-6665

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-15-03183

Court No.193rd District Court

Style: FELICIA D DAVIS

vs.

EDUARDO VARGAS-REYES, et al

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____.M. Executed at _____, within the County of _____ at _____ o'clock _____.M. on the _____ day of _____, 20_____, by delivering to the within named _____

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation \$_____

For mileage \$_____ of _____ County, _____

For Notary \$_____ By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____, to certify which witness my hand and seal of office.

Notary Public _____ County _____

Dianne Coffey

CAUSE NO. DC-15-03183

FELICIA D. DAVIS

IN THE DISTRICT COURT

Plaintiff,

VS.

DALLAS COUNTY, TEXAS

EDUARDO REYES VARGAS; AMICA
MUTUAL INSURANCE COMPANY AND
CAROLINA J. GLENN

Defendants.

193rd JUDICIAL DISTRICT

RETURN OF SERVICE

Came to hand on the 14th day of SEPTEMBER, 2015 at 11:15 A .m. and executed
at 7440 WARREN PARKWAY, SUITE 150, FORT WORTH, TEXAS 76034,
(Address) (Apt#) (City) (State) (Zip Code)
within the county of COLLIN on the 21st day of SEPTEMBER, 2015 at
10:31 A .m. by delivering to Carolina J. Glenn, in person, a true copy of the Citation
together with a true and correct copy of the Plaintiff's Second Amended Petition filed in this
cause, having first endorsed thereupon the date of delivery.

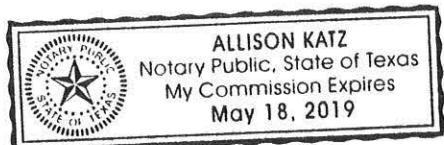
By: J. N. Bennett
Private Process Server

SCH# 194 Expires: 7/31/17

VERIFICATION

BEFORE ME, a Notary Public, on this day personally appeared
James N. Bennett known to be the person whose name is subscribed to the
foregoing document and being by me first duly sworn, declared that the statements therein
contained are true and correct and that he is not a party to this lawsuit and has no interest in the
outcome. Given under my hand and seal of office this 22 day of September, 2015.

Allison Katz
Notary Public, State of Texas



**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

**CAROLINA J. GLENN
2427 ALLEN STREET, # 223
DALLAS, TX 75204**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **SECOND AMENDED** petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the **193rd District Court** at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **FELICIA D. DAVIS**

Filed in said Court **24th day of August, 2015** against

EDUARDO VARGAS-REYES; AMICA MUTUAL INSURANCE COMPANY AND CAROLINA J. GLENN

For Suit, said suit being numbered **DC-15-03183**, the nature of which demand is as follows:
Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **REQ FOR DISCLOSURE, INTERROGATORIES, REQ FOR ADMISSIONS AND REQ FOR PRODUCTION**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 9th day of September, 2015.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By /s/ Shelia Bradley, Deputy
SHELIA BRADLEY



ESERVE

CITATION

DC-15-03183

FELICIA D DAVIS

vs.

EDUARDO VARGAS-REYES, et al

ISSUED THIS
9th day of September, 2015

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: **SHELIA BRADLEY**, Deputy

Attorney for Plaintiff
AMY K WITHERITE
3100 MONTICELLO AVE
SUITE 500
DALLAS TX 75205
214-378-6665

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-15-03183

Court No.193rd District Court

Style: FELICIA D DAVIS

vs.

EDUARDO VARGAS-REYES, et al

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____. M. Executed at _____, within the County of _____ at _____ o'clock _____. M. on the _____ day of _____, 20_____, by delivering to the within named _____

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation \$ _____

For mileage \$ _____ of _____ County, _____

For Notary \$ _____ By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____, to certify which witness my hand and seal of office.

Notary Public _____ County _____

Dianne Coffey

Cause No. DC-15-03183

FELICIA D. DAVIS

IN THE DISTRICT COURT

VS.

193rd JUDICIAL DISTRICTEDUARDO VARGAS-REYES; AMICA
MUTUAL INSURANCE COMPANY AND
CAROLINA J. GLENN

DALLAS COUNTY, TEXAS

RETURN OF SERVICE

Came to hand on the 17 day of SEPTEMBER, 2015 at 11:30 A.m. and executed
 at 2277 PLAZA DRIVE #400 SUGARLAND TX 77479.
 (Address) (Apt#) (City) (State) (Zip Code)

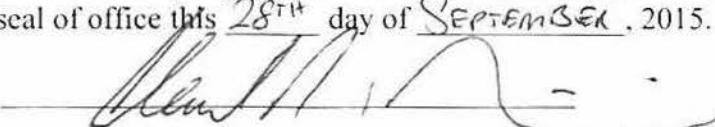
within the county of FORT BEND on the 23 day of SEPTEMBER, 2015 at
3:43 P.m. by delivering to **Amica Mutual Insurance Company**, by serving its
 registered agent, Robert R. Foss Jr., a true copy of the Citation together with a true and correct
 copy of the Plaintiff's Second Amended Petition, Request for Disclosure, First Set of
 Interrogatories, First Request for Admissions, and First Request for Production to Defendant
 filed in this cause, having first endorsed thereupon the date of delivery.

By: Christine Katsouras
 Private Process Server

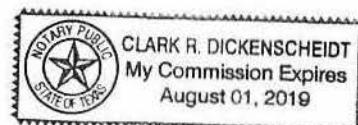
SCH# 11196 Expires: 10-31-17

VERIFICATION

BEFORE ME, a Notary Public, on this day personally appeared
Christine Katsouras known to be the person whose name is subscribed to the
 foregoing document and being by me first duly sworn, declared that the statements therein
 contained are true and correct and that he is not a party to this lawsuit and has no interest in the
 outcome. Given under my hand and seal of office this 28th day of SEPTEMBER, 2015.



Notary Public, State of Texas



**FORM NO. 353-3 - CITATION
THE STATE OF TEXAS**

To:

**AMICA MUTUAL INSURANCE COMPANY
SERVING ITS REGISTERED AGENT, ROBERT R. FOSS JR.
2277 PLAZA DRIVE #400
SUGAR LAND TX 77479**

GREETINGS:

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and **SECOND AMENDED** petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 193rd District Court at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **FELICIA D. DAVIS**

Filed in said Court 24th day of August, 2015 against

EDUARDO VARGAS-REYES; AMICA MUTUAL INSURANCE COMPANY AND CAROLINA J. GLENN

For Suit, said suit being numbered **DC-15-03183**, the nature of which demand is as follows: Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **REQ FOR DISCLOSURE, INTERROGATORIES, REQ FOR ADMISSIONS AND REQ FOR PRODUCTION**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: **FELICIA PITRE**, Clerk of the District Courts of Dallas, County Texas.
Given under my hand and the Seal of said Court at office this 9th day of September, 2015.

ATTEST: **FELICIA PITRE**, Clerk of the District Courts of Dallas, County, Texas

By /s/ Shelia Bradley, Deputy
SHELIA BRADLEY



ESERVE

CITATION

DC-15-03183

FELICIA D DAVIS

vs.

EDUARDO VARGAS-REYES, et al

**ISSUED THIS
9th day of September, 2015**

FELICIA PITRE
Clerk District Courts,
Dallas County, Texas

By: **SHELIA BRADLEY**, Deputy

Attorney for Plaintiff
AMY K WITHERITE
3100 MONTICELLO AVE
SUITE 500
DALLAS TX 75205
214-378-6665

**DALLAS COUNTY
SERVICE FEES
NOT PAID**

OFFICER'S RETURN

Case No. : DC-15-03183

Court No. 193rd District Court

Style: FELICIA D DAVIS

vs.

EDUARDO VARGAS-REYES, et al

Came to hand on the _____ day of _____, 20_____, at _____ o'clock _____. M. Executed at _____
within the County of _____ at _____ o'clock _____. M. on the _____ day of _____.
20_____, by delivering to the within named _____

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by me in serving such process was _____ miles and my fees are as follows: To certify which witness my hand.

For serving Citation

\$ _____

For mileage

\$ _____

of _____ County, _____

For Notary

\$ _____

By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said _____ before me this _____ day of _____, 20_____,
to certify which witness my hand and seal of office.

Notary Public _____ County _____

AMI.22603

CAUSE NO. DC-15-03183

FELICIA D. DAVIS

§ IN THE DISTRICT COURT

VS.

§

**EDUARDO VARGAS-REYES;
AMICA MUTUAL INSURANCE
COMPANY AND
CAROLINA J. GLENN**

§ 193RD JUDICIAL DISTRICT

§

§ DALLAS COUNTY, TEXAS

DEFENDANTS' ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME AMICA MUTUAL INSURANCE COMPANY and CAROLINA J. GLENN, Defendants in the above-entitled and numbered cause, and file this Original Answer to Plaintiff's pleadings on file herein, and in support thereof would respectfully show the Court as follows:

I.

Pursuant to Rule 92 of the TEXAS RULES OF CIVIL PROCEDURE, Defendants deny generally each and every allegation and statement contained in *Plaintiff's Second Amended Petition and Request for Disclosure, First Set of Interrogatories, First Request for Admissions, First Request for Production and Request for Privilege Log to Defendants*, and any further amendments to Plaintiff's pleadings, and demand strict proof thereof.

II.

For further answer, Defendants specifically deny that all conditions precedent to recovery have been met.

III.

For further answer, if necessary, Defendants specifically deny that they have breached any contract with Plaintiff, and would show that Plaintiff's claims are controlled and limited by the Texas Supreme Court's holding in *Brainard v. Trinity Universal Insurance Company*, 216 S.W.3d 809 (Tex. 2006) and subsequent cases. As such, Plaintiff is not entitled to recovery of attorney's fees in connection with this matter.

IV.

For further answer, Defendants affirmatively assert and plead the defense of contributory negligence/comparative responsibility.

V.

For further answer, Defendants invoke the provisions of Section 41.0105 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE limiting Plaintiff's recovery of medical or healthcare expenses to the amount actually paid or incurred. Further, pursuant to Section 18.091 of the TEXAS CIVIL PRACTICE AND REMEDIES CODE, any evidence of economic loss, including lost wages, loss of earning capacity and a loss of contributions of a pecuniary value, must be in a form of a net loss after reduction for federal income tax payments or unpaid tax liability.

VI.

For further answer, Defendants affirmatively assert and plead that Plaintiff's injuries and damages, if any, were caused by or due to conditions, incidents or events which pre-existed the incident made the basis of this suit.

VII.

For further answer, Defendants affirmatively assert and plead that Plaintiff's injuries and damages, if any, were caused by or due to conditions, incidents or events which occurred after the incident made the basis of this suit.

VIII.

Defendants further plead that they are entitled to all off-sets and credits against damages as may be allowed by the subject insurance policy and/or applicable law.

IX.

Pursuant to Rule 216 of the TEXAS RULES OF CIVIL PROCEDURE, Defendants request a trial by jury and would show that the jury fee is being paid on their behalf concurrently with the filing of this answer.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that Plaintiff take nothing by this suit, that Defendants recover their costs, and for such other and further relief, both at law and in equity, to which Defendants may be justly entitled.

Respectfully submitted,

**FLETCHER, FARLEY,
SHIPMAN & SALINAS, L.L.P.**

By: /s/ Paul W. Bennett

PAUL W. BENNETT
State Bar No. 00787071
paul.bennett@fletcherfarley.com
ALEX J. BELL
State Bar No. 24069359
alex.bell@fletcherfarley.com
9201 N. Central Expwy., 6th Floor
Dallas, Texas 75231
214-987-9600 (telephone)
214-987-9866 (facsimile)

**ATTORNEYS FOR DEFENDANTS
AMICA MUTUAL INSURANCE COMPANY
AND CAROLINA J. GLENN**

CERTIFICATE OF SERVICE

This Will Certify that a true and correct copy of the foregoing instrument has been mailed, electronically served, telecopied or hand delivered to all attorneys of record in this cause of action on the 9th day of October, 2015.

/s/ Paul W. Bennett
PAUL W. BENNETT

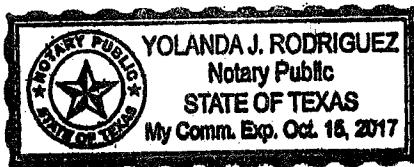
VERIFICATION

THE STATE OF TEXAS)
)
COUNTY OF DALLAS)

BEFORE ME, the undersigned Notary Public, on this day personally appeared **PAUL W. BENNETT**, who being by me duly sworn on his oath deposed and said that he is the attorney of record for the Defendants, and that he is duly qualified and authorized in all respects to make this Affidavit; that he has read Paragraphs II and III of the above and foregoing Defendants' Original Answer; and that every statement contained therein is within his knowledge and is true and correct.


PAUL W. BENNETT

SWORN TO AND SUBSCRIBED BEFORE ME on this the 9th day of October, 2015, to certify which witness my hand and seal of office.




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

Yolanda J. Rodriguez
(Printed Name of Notary Public)

My Commission Expires: 10-15-2017